

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JIMMY SMITH,

Movant,

File No. 5:06-CV-141

v.

HON. ROBERT HOLMES BELL

UNITED STATES OF AMERICA,

Respondent.

/

ORDER GRANTING LEAVE TO APPEAL IN FORMA PAUPERIS

On April 11, 2007, this Court entered an opinion and order (Docket ##13, 14) denying Movant Jimmy Smith's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 and denying a certificate of appealability. Movant has now filed a notice of appeal and a motion for leave to proceed *in forma pauperis* on appeal (Docket #16).

Sixth Circuit Internal Operating Procedure 5.1 provides that a \$450.00 docketing fee and a \$5.00 filing fee must be paid to the district court when a notice of appeal is filed. A prisoner who is unable to pay the required filing fees may seek leave to appeal in a § 2255 action pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure. *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997). Movant has complied with Rule 24(a), which requires him to file a motion for leave to proceed *in forma pauperis* and an affidavit showing his inability to file the required fees (as prescribed by Form 4 of the Appendix of Forms), his

belief that he is entitled to redress, and a statement of the issue he intends to present on appeal. The documents show that Movant is unable to pay the filing and docket fees required for an appeal. In light of his indigence, Movant may proceed *in forma pauperis* on appeal without pre-paying or giving security for fees and costs. FED. R. APP. P. 24(a)(2). Therefore, Movant is not required to pay the \$455 fee for filing an appeal. *See Kincade*, 117 F.33d at 951 (holding that 28 U.S.C. § 1915(b) provides that the fee provisions of the Prison Litigation Reform Act of 1995 do not apply to an appeal from a decision on an application for habeas relief.)

Accordingly,

IT IS ORDERED that Movant Smith's motion for leave to proceed *in forma pauperis* on appeal (Docket #16) is **GRANTED**.

Date: July 10, 2007

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE